

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KATHRYN ELIZABETH SUMMERS)
Claimant)

VS.)

KOHL'S DEPARTMENT STORE)
Respondent)

Docket No. 1,026,713

AND)

LIBERTY MUTUAL INSURANCE CO.)
Insurance Carrier)

ORDER

Respondent and its insurance carrier request review of the March 20, 2006 preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

On August 6, 2005, claimant fell at work and suffered a full thickness tear of the rotator cuff in her left shoulder. In the March 20, 2006 Order, Administrative Law Judge (ALJ) Barnes found that claimant sustained an accidental injury that arose out of and in the course of her employment with respondent. Accordingly, the ALJ granted claimant's request for medical treatment and temporary total disability benefits if taken off work by the authorized treating physician.

Respondent and its insurance carrier contend Judge Barnes erred. They argue claimant's accident did not arise out of her employment as, instead, claimant fell due to a personal risk. Consequently, respondent and its insurance carrier request the Board to deny claimant's request for workers compensation benefits.

Conversely, claimant contends the March 20, 2006 Order should be affirmed. Claimant argues she tripped and fell while performing her job duties which required her to walk and turn while stocking and handling store products.

The only issue on appeal is whether claimant's August 6, 2005 accident arose out of claimant's employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant was the lead person in respondent's shoe department on August 6, 2005. On that date claimant was given a shoe box with old shoes left in it because the new shoes were apparently stolen. Following store procedure, the claimant carried the box and old shoes to the back of the store and placed them in the "theft bin" located in the corner of the break room. Claimant then turned and as she headed out of the room, "I just tripped or stumbled over my left foot and fell down on my left shoulder."

An accident report was completed and respondent's manager, Tiffany Kear, witnessed the accident. Ms. Kear advised the claimant to go home, rest and if she needed to seek treatment to let her know. The claimant worked her shift the following day. But as the day progressed, the claimant endured an increase in pain and therefore sought treatment at the Wichita Minor Emergency office after she left work. After some conservative treatment, the claimant was ultimately diagnosed with a full thickness tear of the rotator cuff.

Claimant agreed that she has multiple sclerosis and is being treated for that condition. Respondent argues that multiple sclerosis affects muscle control and was the likely cause for claimant's fall. Consequently, respondent argues the fall was the result of a personal condition and is not compensable.

The evidence establishes that while claimant was performing her job she tripped and fell. The admitted fact that claimant suffers from multiple sclerosis, without additional evidence, does not establish that condition caused the trip and fall.

Here, claimant was in respondent's service, performing her job when she tripped over her foot and fell to the floor injuring her shoulder. This trip and fall is no different and no less compensable because claimant tripped on her own foot instead of something else on the floor at work. The fall would not have otherwise occurred at work had claimant not been working. Based upon this record, the Board finds no reason to overturn the ALJ's Order. Like the ALJ, the Board is persuaded that claimant met her burden. Accordingly, the ALJ's preliminary hearing Order is affirmed in all respects.

WHEREFORE, it is the finding of the Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated March 20, 2006, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of May 2006.

BOARD MEMBER

c: J. Shawn Elliott, Attorney for Claimant
Kurt W. Ratzlaff, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director